



County of San Diego

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PLEASE NOTE THAT A FORMAL APPLICATION FOR A HABITAT LOSS PERMIT HAS NOT BEEN FILED AT THIS TIME. THE FOLLOWING IS A DRAFT FORM OF DECISION FOR A HABITAT LOSS PERMIT SHOWING THE FORMAT AND POSSIBLE CONDITIONS FOR A FUTURE HABITAT LOSS PERMIT. BECAUSE A FORMAL APPLICATION HAS NOT BEEN FILED, CERTAIN DATES, FINDINGS AND OTHER INFORMATION IS ABSENT FROM THE DRAFT FORM OF DECISION, THIS INFORMATION WILL BE INCLUDED IN THE FINAL FORM OF DECISION.

May 12, 2015

RANCHO SANTA FE 6 L L C
390 SAN ANTONIO AVE #4
SAN DIEGO, CA 92106

DRAFT DECISION OF THE DIRECTOR Habitat Loss Permit

APPLICATION NUMBER: HLP xx-xxx
ASSOCIATED PERMIT(S): PDS2014-LDGRMJ-00017
NAME OF APPLICANT: RANCHO SANTA FE 6 L L C
DESCRIPTION/LOCATION OF LOSS:

The proposed project will remove 2.25 acres of coastal sage scrub associated with the Virissimo Grading Permit as shown on the attached Habitat Loss Exhibit dated May 12, 2015.

The proposed project is located on the east side of Via de las Flores, across the street from the Bridges golf course, within the San Dieguito Community Planning Area of unincorporated San Diego County. The project location is indicated on the attached USGS map.

The proposed Habitat Loss Permit will allow removal of habitat for grading conducted without a permit to create pads.

DECISION:

The Director of Planning & Development Services has approved your application for a HABITAT LOSS PERMIT. This Habitat Loss Permit approval does not become final until both the United States Fish and Wildlife Service (USFWS) and the California Department of Fish and Wildlife (CDFW) concur with the Director's approval, by either of the following:

1. Concurrence implied by allowing a 30-day period, initiated by their receipt of this decision, to lapse without presenting written notification to the County that the decision is inconsistent with the Southern California Coastal Sage Scrub (CSS) Natural Community Conservation Planning (NCCP) Process Guidelines (CDFW, November 1993) or any approved subregional mitigation guidelines; or
2. Granting concurrence through written notification to the County prior to the conclusion of the 30-day period, initiated by their receipt of this decision, that the project is consistent with the Southern California CSS NCCP Process Guidelines or any approved subregional mitigation guidelines.

Pending the issuance of an associated Grading Permit, Clearing Permit or Improvement Plan from the County of San Diego, this Habitat Loss Permit acknowledges the loss of the above-described coastal sage scrub habitat that was previously cleared, graded or removed without a valid permit (see attached Habitat Loss Exhibit). However, no take authorization for incidental take of sensitive species, including the California gnatcatcher, shall be conveyed by the County of San Diego for previous clearing, grading, or removal of coastal sage scrub habitat that was accomplished without a valid permit or authorization.

This Habitat Loss Permit cannot be relied upon for the clearing, grading or removal of any vegetation until a valid Grading Permit, Clearing Permit or Improvement Plan has been issued from the County of San Diego authorizing such vegetation removal. Furthermore, use and reliance upon this Habitat Loss Permit cannot occur until all of the requirements as specified within the "Conditions of Approval" section of this permit have been satisfied.

CONDITIONS OF APPROVAL:

The following conditions are being placed on the Grading Plan. For the final Habitat Loss Permit, the list of conditions will be modified to require satisfaction of all conditions prior to use and reliance on the HLP.

- A. Prior to use and reliance on this Habitat Loss Permit, the following conditions shall be met:
 1. Obtain approval from the County of San Diego of a Grading Permit, PDS2014-LDGRMJ-00017, that authorizes the clearing and/or grading of the area addressed by this Habitat Loss Permit.
 2. **BIO#1-BIOLOGICAL EASEMENT [PDS, FEE X 2]**

In order to protect sensitive biological resources, pursuant to the Habitat Loss Permit Ordinance and CEQA, a biological open space easement shall be granted. **DESCRIPTION OF REQUIREMENT:** Grant to the County of San Diego by separate document, an open space easement over the whole area east of the San Diego Aqueduct easement, except for the area within the SDG&E easement, **as shown on the approved Grading Plan**. This easement is for the protection of biological resources and prohibits all of the following on any portion of the land subject to said easement: grading; excavation; placement of soil, sand, rock, gravel, or other material; clearing of vegetation; construction, erection, or placement of any building or structure; vehicular activities; trash dumping; or use for any purpose other than as open space. Granting of this open space authorizes the County and its agents to periodically access the land to perform management and monitoring activities for the purposes of species and habitat conservation. The only exception(s) to this prohibition is:

1. Selective clearing of vegetation by hand to the extent required by written order of the fire authorities for the express purpose of reducing an identified fire hazard. While clearing for fire management is not anticipated with the creation of this easement, such clearing may be deemed necessary in the future for the safety of lives and property. All fire clearing shall be pursuant to the applicable fire code of the Fire Authority Having Jurisdiction and the Memorandum of Understanding dated February 26, 1997, (<http://www.sdcountry.ca.gov/PDS/docs/MemoofUnder.pdf>) between the wildlife agencies and the fire districts and any subsequent amendments thereto.
2. Activities conducted pursuant to a revegetation or habitat management plan approved by the Director of PDS, DPW or DPR.

DOCUMENTATION: The applicant shall prepare the draft plats and legal descriptions of the easements, then submit them for preparation and recordation with the *[DGS, RP]*, and pay all applicable fees associated with preparation of the documents. **TIMING:** Prior to issuance of any permit, and prior to use of the premises in reliance of this permit the easements shall be recorded. **MONITORING:** The *[DGS, RP]* shall prepare and approve the easement documents and send them to *[PDS, PCC]* for pre-approval. The *[PDS, PCC]* shall pre-approve the language and estimated location of the easements before they are released to the applicant for signature and subsequent recordation. Upon Recordation of the easements *[DGS, RP]* shall forward a copy of the recorded documents to *[PDS, PCC] [DPR, TC]* for satisfaction of the condition.

3. **BIO#2–OFFSITE MITIGATION [PDS, FEE X2]**

INTENT: In order to mitigate for the impacts to Diegan coastal sage scrub, which is a sensitive biological resource pursuant to the Habitat Loss Permit ordinance and CEQA, offsite mitigation shall be acquired. **DESCRIPTION OF REQUIREMENT:** The applicant shall purchase habitat credit, or provide for the conservation of habitat of 0.2 acre of coastal sage scrub, located at the Brook Forest Mitigation bank or another approved mitigation bank or site designated as PAMA by the Draft North County MSCP as indicated below.

- a. **Option 1:** If purchasing Mitigation Credit the mitigation bank shall be approved by the California Department of Fish & Wildlife. The following evidence of purchase shall include the following information to be provided by the mitigation bank:

1. A copy of the purchase contract referencing the project name and numbers for which the habitat credits were purchased.
 2. If not stated explicitly in the purchase contract, a separate letter must be provided identifying the entity responsible for the long-term management and monitoring of the preserved land.
 3. To ensure the land will be protected in perpetuity, evidence must be provided that a dedicated conservation easement or similar land constraint has been placed over the mitigation land.
 4. An accounting of the status of the mitigation bank. This shall include the total amount of credits available at the bank, the amount required by this project and the amount remaining after utilization by this project.
- b. **Option 2:** If habitat credit cannot be purchased in a mitigation bank, then the applicant shall provide for the conservation habitat of the same amount, location, and type of land mentioned above, as indicated below:
1. Prior to purchasing the land for the proposed mitigation, the location should be pre-approved by [PDS].
 2. A Resource Management Plan (RMP) shall be prepared and approved pursuant to the County of San Diego Biological Report Format and Content Requirements to the satisfaction of the Director of PDS. If the offsite-mitigation is proposed to be managed by DPR, the RMP shall also be prepared and approved to the satisfaction of the Director of DPR.
 3. An open space easement over the land shall be dedicated to the County of San Diego or like agency to the satisfaction of the Director of PDS. The land shall be protected in perpetuity.
 4. The purchase and dedication of the land and the selection of the Resource Manager and establishment of an endowment to ensure funding of annual ongoing basic stewardship costs shall be complete prior to the approval of the RMP.
 5. In lieu of providing a private habitat manager, the applicant may contract with a federal, state or local government agency with the primary mission of resource management to take fee title and manage the mitigation land). Evidence of satisfaction must include a copy of the contract with the agency, and a written statement from the agency that (1) the land contains the specified acreage and the specified habitat, or like functioning habitat, and (2) the land will be managed by the agency for conservation of natural resources in perpetuity.

DOCUMENTATION: The applicant shall purchase the offsite mitigation credits and provide the evidence to the [PDS, PCC] for review and approval. If the offsite mitigation is proposed to be owned or managed by DPR, the applicant must provide evidence to the [PDS PCC] that [DPR, GPM] agrees to this proposal. It is recommended that the applicant submit the mitigation proposal to the [PDS, PCC], for a pre-approval. If an RMP is going to be submitted in-lieu of purchasing credits, then the RMP shall be prepared and an application for the RMP shall be submitted to the [PDS, ZONING].

TIMING: Prior to issuance of any permit, and prior to use of the premises in reliance of this permit, the mitigation shall occur. **MONITORING:** The [PDS, PCC] shall review the

mitigation purchase for compliance with this condition. Upon request from the applicant [PDS, PCC] can pre-approve the location and type of mitigation only. The credits shall be purchased before the requirement can be completed. If the applicant chooses option #2, then the [PDS, ZONING] shall accept an application for an RMP, and [PDS, PPD] [DPR, GPM] shall review the RMP submittal for compliance with this condition and the RMP Guidelines.

- B. Prior to use and reliance on this permit the following conditions shall be placed on the face of all future grading permits or improvement plans:

1. **OPEN SPACE SIGNAGE [PDS, FEE]**

INTENT: In order to protect the proposed open space easement from entry, informational signs shall be installed. **DESCRIPTION OF REQUIREMENT:** Open space signs shall be placed along the boundaries of the biological open space as indicated on the approved Grading Plan. The signs must be corrosion resistant, a minimum of 6" x 9" in size, on posts not less than three (3) feet in height from the ground surface, and must state the following:

**Sensitive Environmental Resources
Area Restricted by Easement**

Entry without express written permission from the County of San Diego is prohibited. To report a violation or for more information about easement restrictions and exceptions contact the County of San Diego,
Planning & Development Services
Reference: PDS2014-LDGRMJ-00017

DOCUMENTATION: The applicant shall install the signs as indicated above and provide site photos and a statement from a California Registered Engineer, or licensed surveyor, that the open space signs have been installed at the boundary of the open space easement(s). **TIMING:** Prior to any occupancy, final grading release, or use of the premises in reliance of this permit, the open space signs shall be installed. **MONITORING:** The [PDS, PCC] shall review the photos and statement for compliance with this condition.

2. **OPEN SPACE BARRIERS [PDS, FEE]**

INTENT: In order to protect the proposed open space easement from entry, or disturbance, existing dirt roads into the biological open space easement shall be blocked with large boulders. **DESCRIPTION OF REQUIREMENT:** Large boulders shall be placed at each entry of existing dirt roads into the biological open space easement as indicated on the approved Grading Plan. **DOCUMENTATION:** The applicant shall install the large boulders as indicated above and provide site photos and a statement from a California Registered Engineer, or licensed surveyor that the open space barriers (boulders) have been installed at the open space easement boundary. **TIMING:** Prior to any occupancy, final grading release, or use of the premises in reliance of this permit, the boulders shall be placed. **MONITORING:** The [PDS, PCC] shall review the photos and statement for compliance with this condition.

3. **BREEDING SEASON AVOIDANCE [PDS, FEE X2]**

INTENT: In order to avoid impacts to nesting migratory birds and raptors, which are a sensitive biological resource pursuant to CEQA, the MBTA and Fish and Wildlife Code,

breeding season avoidance shall be implemented on all plans. **DESCRIPTION OF REQUIREMENT:** There shall be no brushing, clearing and/or grading such that none will be allowed during the breeding season of migratory birds or raptors, between January 15 and August 31. The Director of PDS [PDS, PCC] may waive this condition, through written concurrence from the US Fish and Wildlife Service and the California Department of Fish and Wildlife, provided that no nesting or breeding birds are present within 300 feet of the brushing, clearing or grading (500 feet for raptors) based on a survey conducted by a County-approved biological consultant within seven days prior to the proposed start of clearing/grading. If nesting birds are present in the vicinity, prior to granting permission PDS and the Wildlife Agencies may require avoidance measures such as, but not limited to, staking and posting an area 300 feet from the nest to prohibit all clearing, grubbing and construction work within the perimeter until the qualified biologist determines that the nests are no longer occupied with written notification to the approval of the Director of PDS. **DOCUMENTATION:** The applicant shall provide a letter of agreement with this condition; alternatively, the applicant may submit a written request for waiver of this condition. No grading shall occur on-site until concurrence is received from the County and the Wildlife Agencies. **TIMING:** Prior to preconstruction conference and prior to any clearing, grubbing, trenching, grading, or any land disturbances and throughout the duration of the grading and construction, compliance with this condition is mandatory unless the requirement is waived by the County upon receipt of concurrence from the Wildlife Agencies. **MONITORING:** The [DPW, PDCI] shall not allow any grading during the specified dates, unless a concurrence from PDS and the Wildlife Agencies is received. The [PDS, PCC] shall review the concurrence letter.

ENVIRONMENTAL FINDINGS:

A. CEQA Findings

1. TO BE PROVIDED

B. FINDINGS MADE IN SUPPORT OF THE ISSUANCE OF THE HABITAT LOSS PERMIT:

The following findings are made based upon all of the documents contained in the record for this project, and pursuant to Section 86.104 of County of San Diego Ordinance No. 8365 (N.S.) and Section 4.2.g of the CSS NCCP Process Guidelines (CDFW, November 1993):

Finding 1.a: The habitat loss does not exceed the five percent guideline.

The proposed project will impact 2.25 acres of coastal sage scrub and zero pairs of California gnatcatcher (*Poliophtia californica*). Approved coastal sage scrub losses as of the date of February 6, 2013 and including this approval, for the entire unincorporated County, outside the boundaries of the Multiple Species Conservation Program (MSCP), are presented in the following table:

Unincorporated Area Coastal Sage Scrub Cumulative Losses	
Total loss allowed under five percent guideline:	2953.30 acres

Cumulative loss of Coastal sage scrub to date:	1187.52 acres
Net loss due to this project:	2.25 acres
Total cumulative loss:	1189.77 acres
Remaining loss under five percent guideline:	1763.53 acres

Finding 1.b: The habitat loss will not preclude connectivity between areas of high habitat values.

The habitat loss will not preclude connectivity between areas of high habitat values because the project is surrounded on three sides by existing development. The area to be impacted is situated within an essentially developed area, and opportunities for large mammal use are very limited. The site is surrounded on three sides by extensive, long-established development. The golf course to the west of the site is protected by an eight foot high chain link fence which precludes wildlife from entering or traversing. There is higher quality habitat to the east of the site, which connects to the proposed on-site open space area.

Finding 1.c: The habitat loss will not preclude or prevent the preparation of the subregional NCCP.

The habitat loss will not preclude or prevent the preparation of the subregional NCCP because the impact area is not designated as PAMA and is located along the road, adjacent to development on the north and south, and portions were subject to disturbance well before the grading occurred in 2008. By contrast, the eastern area to be preserved as biological open space is designated as PAMA and connects to off-site preserved habitat.

Finding 1.d: The habitat loss has been minimized and mitigated to the maximum extent practicable in accordance with Section 4.3 of the NCCP Process Guidelines.

The habitat loss has been minimized to the maximum extent possible by locating the graded pad at the western end of the property along the road, between existing homes. The project will impact only 2.25 acres, one quarter of the Diegan coastal sage scrub on the site, while preserving 4.3 acres in biological open space and retaining an additional 2.26 acres within existing un-buildable easements. An additional 0.2 acre of mitigation will be purchased off-site in an approved mitigation bank within the North County MSCP area to make up the 2:1 mitigation ratio, since the area within utility easements is considered impact neutral.

Finding 2 The habitat loss will not appreciably reduce the likelihood of survival and recovery of listed species in the wild.

The habitat loss will not appreciably reduce the likelihood of survival and recovery of listed species in the wild because the only sensitive species observed on-site were Nuttall's scrub oak, turkey vulture, and mule deer. The turkey vulture was observed foraging overhead but the site does not include suitable nesting habitat. The Nuttall's scrub oak and the mule deer were both observed in the area east of the aqueduct easement that would be preserved as biological open space, and would not be impacted by the grading. The site also has a moderate potential to support the California gnatcatcher; however, protocol surveys for this species were negative. The portion of the site to be preserved is the higher quality, more contiguous habitat that would be more likely to support gnatcatchers. In addition, the

preservation of 4.3 acres of coastal sage scrub on-site and 0.2 acre off-site fully mitigates for the loss of 2.25 acres.

Finding 3: The habitat loss is incidental to otherwise lawful activities.

The issuance of a Habitat Loss Permit by the County of San Diego, with the concurrence of the Department of Fish and Wildlife and U.S. Fish and Wildlife Service and approval by the County of San Diego of a Grading Permit, Clearing Permit, or Improvement Plan is required to permit the loss of coastal sage scrub habitat that was previously cleared, graded or removed without a valid permit and to allow for conformance with Sections 86.102 and 86.104 of the San Diego County Code. Construction and/or further land use modification will not commence until all appropriate permits have been issued. As such, the anticipated loss will be incidental to “otherwise lawful activities”.

NCCP FLOWCHART

1. Is natural vegetation present? **Yes.**
2. Is Coastal sage scrub present? **Yes.**
3. Is Coastal sage scrub the most dense in the subregion? **No.**
4. Is the land close to high value district. **Yes.** There is high-quality preserved coastal sage scrub to the east of the project site.
5. Is the land located in a corridor between higher value districts. **No.**
6. Does the land support high density of target species? **No.**

Based on the NCCP Logic Flow Chart, the quality of habitat supported on the Virissimo project is defined as being “Intermediate Value.”

MITIGATION MONITORING AND REPORTING PROGRAM:

The following shall be the Mitigation Monitoring or Reporting Program for this Habitat Loss Permit:

Public Resources Code Section 21081.6 requires the County to adopt a mitigation reporting or monitoring program for any project that is approved on the basis of a mitigated Negative Declaration or an Environmental Impact Report for which findings are required under Section 21081(a)(1). The program must be adopted for the changes to a project which the County has adopted, or made a condition of project approval, in order to mitigate or avoid significant effects on the environment. The program must be designed to ensure compliance during project implementation.

The mitigation monitoring program is comprised of all the environmental mitigation measures adopted for the project. The full requirements of the program (such as what is being monitored, method and frequency, who is responsible, and required time frames) are found within the individual project conditions. These conditions are referenced below by category under the mechanism which will be used to ensure compliance during project implementation.

- Subsequent Project Permits

Compliance with the following conditions is assured because specified subsequent permits or approvals required for this project will not be approved until the conditions have been satisfied:

Conditions A1 through A3, B1, B2

- Enforcement

Compliance with the following conditions is assured because complaints of non-compliance may be provided by the public to the County which may then investigate the status of compliance and pursue enforcement:

Condition B3

- Ongoing Mitigation

Compliance with the following conditions is assured because County staff will monitor the on-going requirements and, if necessary, pursue the remedies specified in the project permit, the security agreement, or the mitigation monitoring agreement:

Condition B3

NOTICE: The issuance of this permit by the County of San Diego does not authorize the applicant for said permit to violate any federal, state, or county laws, ordinances, regulations, or policies, including but not limited to, the federal Endangered Species Act and any amendments thereto.

NOTIFICATION TO APPLICANT: Because your project has an effect on native biological resources, State law requires the payment of a \$2,210 fee to the California Department of Fish and Wildlife for their review of the Mitigated Negative Declaration (Fish and Wildlife Code §711.4) and a \$50 administrative fee to the County (\$2,260 total). If you made this payment at the time of public review of the environmental document pursuant to Administrative Code Section 362, Article XX, effective August 27, 1992, you have met this obligation. If the fee has not been paid, to comply with State law, the applicant should remit to the County Planning & Development Services, within two (2) working days of the effective date of this approval (the "effective date" being the end of the appeal period, if applicable). **The payment must be by certified check or cashier's check payable to the "County of San Diego" and can be submitted to the cashier at the PDS office or directly to the County Clerk.** The fees (excluding the administrative fee) may be waived for projects that are found by the Planning & Development Services and the California Department of Fish and Wildlife to have a no effect impact on fish and wildlife resources. Failure to remit the required fee in full within the time specified above will result in County notification to the State that a fee was required but not paid, and could result in State imposed penalties and recovery under the provisions of the Revenue and Taxation Code. In addition, Section 21089(b) of the Public Resources Code, and Section 711.4(c) of the Fish and Wildlife Code, provide that no project shall be operative, vested, or final until the required filing fee is paid.

JUDICIAL REVIEW TIME LIMITATIONS: The time within which judicial review of this decision must be sought is governed by Code of Civil Procedure Section 1094.6, which has

been made applicable in the County of San Diego by San Diego County Code Section 11.120. Any petition or other paper seeking judicial review must be filed in the appropriate court not later than the 90th day following the date on which this decision becomes final; however, if within 10 days after the decision becomes final a request for the record of the proceedings is filed and the required deposit in an amount sufficient to cover the estimated cost of preparation of such record is timely deposited, the time within which such petition may be filed in court is extended to not later than the 30th day following the date on which the record is either personally delivered or mailed to the party, or the party's attorney of record. A written request for the preparation of the record of the proceedings shall be filed with the Director, Planning & Development Services, 5510 Overland Avenue, Suite 110, San Diego, California 92123.

The foregoing decision was approved by the Director of Planning & Development Services on date of decision. A copy of this decision, and the documentation supporting the decision, is on file in the Planning & Development Services office at 5510 Overland Avenue, Suite 110, San Diego, California.

PLANNING & DEVELOPMENT SERVICES
MARK WARDLAW, DIRECTOR

BY:

CARA LACEY, Chief
Project Planning Division

Attachments

Habitat Loss Exhibit dated May 12, 2015
USGS Map
Biological Letter Report

cc: To be provided at issuance of Habitat Loss Permit

email cc:

Emmet Aquino, Project Planning, Planning & Development Services
Ken Brazell, Team Leader, Land Development, Planning & Development Services
Sean McLean, Land Development, Planning & Development Services
Charles Richardson, Code Enforcement Officer, Code Compliance, Planning & Development Services
Beth Ehsan, Project Planning, Planning & Development Services
Mindy Fogg, Planning Manager, Project Planning, Planning & Development Services
San Dieguito Planning/Sponsor Group
Maggie Loy, HLP Coordinator, Project Planning, Planning & Development Services